

Crim419/INDG419

# INDIGENOUS PEOPLES IN THE INTERNATIONAL REALM: THE ROAD TO THE UNDRIP



## THE REDMAN'S APPEAL FOR JUSTICE

The Honourable Sir James Eric Drummond, K.C.M.G., C.B., Secretary-General of the League of Nations, Geneva.

Under the authority vested in the undersigned by the Council of the League and the High Deputy to which all the Council composed of European states, of the Six Nations of the League, being a state within the purview and meaning of Article 11 of the Covenant of the League of Nations, and acting at present as member of the League, I, the undersigned, person in the said authority, do hereby bring to the notice of the League of Nations that a dispute and distribution of power has arisen between the State of the Six Nations of the League on the one hand and the British Empire and Canada, being members of the League, on the other, the nature as respects and distribution of the power being set out in paragraphs 10 to 17 inclusive hereof.

1. The Six Nations of the League are therefore invited to accept the obligations of membership of the League for the purpose of such dispute, upon such conditions as may be prescribed.

2. The constituent members of the State of the Six Nations of the League, that is to say, the Mohawks, the Oneidas, the Onondagas, the Cayugas, the Senecas and the Tuscaroras, now and here have been for many centuries, organized and self-governing peoples, respectively, within domains of their own, and united in the United League of Nations, the League of the League.

Deskaheh - 1884



## Haudenosaunee mark 100th anniversary of Deskaheh's attempt to speak to League of Nations

Deskaheh has become a symbol for Indigenous rights at the United Nations

Ka'rihensio Deer | CBC News | Posted Jul 24, 2023 1:00 AM PDT | Last updated: 12 hours ago



A hundred years after the Deskaheh came to Geneva to defend the rights of Indigenous Peoples, the city welcomed a delegation from the Haudenosaunee Confederacy to commemorate the centenary. (A. Pizzolante, Ville de Genève/Facebook)

## Back to Geneva: 1977



### UN General Assembly¶

• -- (Currently 193 Member States)¶

### Economic and Social Council (ECOSOC)¶

• -- 54 member Governments elected by the General Assembly for overlapping three year terms¶

### Human Rights Council¶

• -- Formerly Commission on Human Rights (Changed in 2006)¶

• -- (47 Member States)¶

### Sub-Commission on the Promotion and Protection of Human Rights¶

• -- Previously Sub-Commission on Prevention of Discrimination and Protection of Minorities (Changed in 1995, last year of existence was 2006; recommended they be replaced by an advisory panel)¶

• -- 26 Members: seven experts from African states, five from Asia, five from Latin America, three from Eastern Europe and six from Western Europe and other States¶

### Working Group on Indigenous Populations/Peoples¶

• -- 5 members – one from each geographic region¶

• -- Met in Geneva for 1-2 weeks each July¶



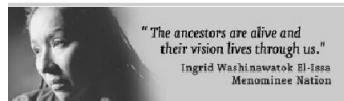
## The Working Group

- ◎ Five members; sought the advice, participation and consent of Indigenous representatives throughout its existence
- ◎ Two major “standard-setting” projects:
  - Draft Declaration on the Rights of Indigenous Peoples (Mme Erica Daes) – completed 1994
  - Study of “Treaties, Agreements, and Other Constructive Arrangements” (Miguel Alfonso Martinez) – completed 1999
- ◎ Recent developments identify issues

## The Contemporary UN

- ⦿ Decade of World's Indigenous Peoples began in 1994
- ⦿ Aspiration was to
  - Pass the *Declaration on the Rights of Indigenous Peoples* in the General Assembly by 2005.
  - Create more structures that would bring Indigenous peoples into the UN structure

## Creation of Structures



- ⦿ Establishment by the UN of the *Permanent Forum on Indigenous Issues* in 2000
- ⦿ Meets in New York each May



## Permanent Forum on Indigenous Issues: 2023-2025 Delegates Chosen by Indigenous Peoples' Organizations



## Creation of Structures

- ⦿ Appointment in 2001 of a *Special Rapporteur* to deal with human rights and fundamental freedoms of Indigenous peoples



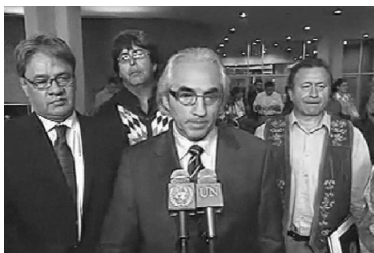
## Expert Mechanism

- ◎ Expert Mechanism on the Rights of Indigenous Peoples
  - Created in 2007 and began activity in 2008
  - Meets in Geneva every July
  - Replaces Working Group
  - "Preference" will be given for Indigenous representatives
  - Main order of business is to provide the Human Rights Commission with "thematic advice" relating to the implementation of the *Declaration*

## UN Declaration on the Rights of Indigenous Peoples

- ◎ Passed at the Working Group in 1994
- ◎ Passed at the Sub-Commission in 1994
- ◎ Passed at the UN Commission on Human Rights in 2006
- ◎ Went to UN General Assembly in 2006, but no vote
- ◎ Final vote held in the General Assembly on 13 September 2010

## Reaction to UNDRIP Vote



### Canada 'moving away' from its commitment to human rights

UN human rights commissioner slams vote against indigenous people's rights declaration

**BY DAVID HENNING**

OTTAWA — Canada's commitment to human rights is slipping and the country must seek help to regain the position it once held as an international human rights leader, a top United Nations official said Monday.

UN High Commissioner for Human Rights Louise Arbour, who is Canadian, said she was particularly dismayed that Canada has voted against a non-binding UN declaration of rights for indigenous peoples last month.

Her comments were added at the Congress government, which has shown little interest in multilateral diplomacy since its Liberal predecessor.

Arbour said Canada had historically been recognized as a world leader whose leadership was widely sought and much admired.

"I am very worried that this very important vote that we have if ourselves is not being sufficiently reached our government to allow us to continue to occupy a place much larger than the one that our slight voice among 192 member states of the United Nations would otherwise allow us," she said.

"I hope that we... will collectively work very hard to reclaim that privileged space," she told an Ottawa conference on human rights.

Critics complain that the Conservatives are too close to Washington, where U.S. President George W. Bush's record on human rights is regularly attacked.

Federal Justice Minister Rob Nicholson, who was in the audience, declined to comment when asked by reporters for his reaction.

Foreign Minister Maxime Bernier would not be available for comment, a spokesman said.

Arbour is a former judge with the Supreme Court of Canada who was appointed to that job by the Liberals.

"I am very worried that this very important vote that we have if ourselves is not being sufficiently reached our government to allow us to continue to occupy a place much larger than the one that our slight voice among 192 member states of the United Nations would otherwise allow us," she said.

NPP leader Jack Layton said "people are wondering what happened to Canada" as its international reputation slipped.

"We seem to be a pale reflection of what comes out of the White House... our government has different ways than other countries that Canadians admire... to seek support."

Arbour later told reporters she was surprised by the Canadian vote on indigenous rights and questioned whether Ottawa was still able to portray itself as a human rights leader.

"I think there is a sense that Canada is moving away from its long commitment to multilateralism and is now I think adhering to other things that are either national or regional agreements," she said.

"Canadians still have an image of themselves that is a little prouder, that is not reflective of the contemporary position and the Canada one just should play in my view internationally."

NATIVE AFFAIRS VANCOUVER SUN SAT/13 NOV 2010/PB2

## Canada throws support behind UN document on aboriginal rights

BY AMY MINSKY

OTTAWA — The federal government did a U-turn Friday and threw its support behind a United Nations declaration outlining the rights of the world's estimated 370 million indigenous people — an action the Assembly of First Nations has urged since the declaration was adopted in 2007.

The endorsement represents a new stage in the relations between the government and Canada's aboriginal population, said National Chief Shawn Alico.

"By endorsing the declaration, it offers an opportunity to really hit the reset button in the relationship and get on with specific areas of reform," he said.

"And we need to get on now with developing specific plans to get that work done."

The United Nations Declaration on the Rights of Indigenous Peoples outlines the individual and collective rights of indigenous people to their culture, health, education and employment. It also outlaws discrimination against them.

Canada was one of four nations that originally voted against the declaration, which was adopted by the General Assembly in September 2007 after more than 20 years of debate. Since then, Australia and New Zealand also have officially endorsed it. The United States is the only country that has yet to change its position.

At the time Canada voted against it, the government said the document was "fundamentally incompatible with Canada's constitutional framework."

"Our intent was always to approach the declaration in a careful and principled manner," Margot Geduld, a spokeswoman for the department of Indian and Northern Affairs, said Friday.

Indigenous Affairs Minister Carolyn Bennett and Justice Minister Jody Wilson-Raybould, who are in New York this week to attend the Permanent Forum on Indigenous Issues, said they will officially announce on Tuesday Canada's decision to drop the qualifications to the declaration.

"We will be changing our position here at the UN and remove our status as permanent objector to become a full supporter," Bennett told reporters on Monday.

The declaration, she said, tells governments, corporations and all Canadians that "we must begin by recognizing our relationship with indigenous people, and be able to understand the rights that they hold, as they begin any thought of a project or policies that affect indigenous people."

Carly McLeod, the Conservative critic for indigenous affairs, said her party is concerned by the move. "I think it's important to have reassurances that Canada is not going to give up its sovereignty or the ability to make final decisions in areas that are in the best interests of the country," she said.

"The ramifications of dropping the objection status to the declaration are unclear," McLeod said. "They haven't told Canadians what it's going to mean in terms of what changes will need to be made and what the implications are."

The declaration, known as the UNDRIP, aims to protect the collective and individual rights of indigenous peoples that are not covered in other documents, with special emphasis on their right to practice their own culture and customs and to develop their own economies along with their own social and political institutions.

Canada, under the previous Conservative government, and three other countries — the United States, Australia and New Zealand — voted against the declaration when it was first passed by the United Nations in 2007.

Three years later, this country softened its stance, saying it endorsed the declaration but with qualifications. The Conservatives called it "regrettable" and said it was a "non-legally binding document that does not reflect customary international law nor change Canadian laws."

By 2009, the other three dissenting countries had reversed their positions and Canada was singled out at a meeting of the World Conference of Indigenous Peoples as being the only country that continued to distance itself from some elements of the UNDRIP.

Last spring, the Truth and Reconciliation Commission, which spent years examining the abuse of Canada's former Indian residential schools, called upon all levels of government to endorse the UN declaration. The Liberals have promised to implement all of the commission's calls to action.

Ferry Bellefleur, the national chief of the Assembly of First Nations, has spoken often about the importance of endorsing the declaration in its entirety and does not agree that it provides a path forward.

"What the declaration does, the way to make it clear that governments and indigenous peoples must negotiate mutually satisfactory resolutions to conflicts, the government's unequalled support."

Mr. Bellefleur said that lets us that the UNDRIP is a public expression of explicit, unqualified support for the declaration is an essential step "toward meeting the commitment to re-embed nation-to-nation relationships based on recognition or respect, respect, co-operation and partnership."

Merrill Ann Pharr, the executive director of CICA, a Winnipeg-based organization that represents mainly First Nations communities and a faculty member at the University of Regina, applauded the government's decision to drop its objections to the UN declaration.

"It's the first time in Canadian history of a government making such strong statements about the rights of indigenous people," said Ms. Pharr, who is also a justice professor at the University of Regina.

What the declaration does, she said, is to make it clear that governments and indigenous peoples must negotiate mutually satisfactory resolutions to conflicts.

AB • NEWS THE GLOBE AND MAIL • THURSDAY, MAY 30, 2010

## Canada drops objection to UN declaration

Previous government worried requirements could be interpreted as a veto over decisions made in the public interest

OTTAWA — Canada will no longer be the lone objector among the world's countries to the United Nations Declaration on the Rights of Indigenous Peoples.

The move would lift the qualifications to the country's endorsement of the declaration. Those qualifications were officially registered by the previous Conservative government over concerns that the document's requirement for the "free, prior and informed consent" of indigenous people on issues that affect them could be interpreted as a veto over decisions on environmental and other issues made in the broader public interest.

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## Once Again Subjects of Law

- At the UN, unlike in Canada thus far, structures are being created that make Indigenous peoples a permanent presence
  - Reconciling the maps of nations states and of peoples
- Documents such as the *Declaration* are powerful statements of Indigenous rights, e.g., to self-determination
- Returning as "subjects" of law rather than "objects" of law

How UNDRIP Changes Canada's Relationship with Indigenous Peoples

